

OFFICE OF THE GENERAL COUNSEL  
Division of Operations-Management

MEMORANDUM OM 95-80

October 20, 1995

TO: All Regional Directors, Officers-in-Charge,  
and Resident Officers

FROM: B. Allan Benson, Acting Associate General Counsel

SUBJECT: Litigation of Salting Cases

In Memorandum OM 95-41, guidance was provided concerning the litigation of salting cases. Specifically, field offices were requested to hold in abeyance all merit salting cases involving paid union organizers **and Town & Country**<sup>1</sup> union members/employees/applicants if the cases were appealable to either the 4th, 6th or 8th Circuits and cases involving only Town & Country union members/employees/applicants if they were appealable to the 8th Circuit. The memorandum indicated that you should issue complaint and proceed to a hearing in certain other salting cases.

Since that memorandum issued we have had cause to reassess our litigation policy of these cases. Specifically, in many cases the parties are seeking postponements of trials in cases raising Town & Country issues, often at times when extensive time and resources have already been expended on pretrial. Many of these motions raise real issues as to whether the litigation involves a "pure" Town & Country case or a mixed case, and additional scarce resources are being directed to these issues. In view of our reduced budget situation, and the fact that it appears that the Supreme Court may well rule on the Town & Country case by as early as January, we have determined to hold all cases raising any Town & Country issue in abeyance until the Court rules. We believe this is the best use of our resources at this time, particularly as it appears that some field casehandling activities may need to be curtailed for budgetary reasons in any event, and because once the Court issues its decision, a significant number of the Town & Country cases will be more susceptible to settlement.

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<sup>1</sup> Town & Country Electric, Inc., 309 NLRB 1250 (1992); Town & Country Electric v. NLRB, No. 92-3911 (8th Cir. Aug. 31, 1994).

Accordingly, all salting charges should be investigated and nonmerit cases should be dismissed absent a withdrawal. In all merit cases, field offices should seek settlements. Failing achievement of a settlement, a letter should issue notifying the parties that the case is being held in abeyance pending a decision by the Supreme Court in Town & Country<sup>2</sup>. Similarly, all trials currently scheduled in cases raising Town & Country issues should be immediately postponed until the Court rules. In order to not unduly delay the ultimate resolution of these cases, postponements should be to a date certain in January or as soon thereafter as possible, subject to further postponement if the Court does not rule. All ongoing trials are unaffected by this policy. Similarly, submissions of briefs are unaffected.

If you have any questions concerning specific situations, please contact Deputy to the Assistant General Counsel Richard Hardick or your Assistant General Counsel.

B. A. B.

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<sup>2</sup> In the event that a respondent wishes to proceed to trial in order to resolve other issues or to limit its liability, the Region may proceed with such litigation.